

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Chaves	Team: Squad #7	CCRB Case #: 201904815	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 06/02/2019 3:41 AM	Location of Incident: Miller Avenue and Fulton Street	Precinct: 75	18 Mo. SOL 12/2/2020	EO SOL 7/19/2021	
Date/Time CV Reported Tue, 06/04/2019 1:00 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 06/04/2019 1:00 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Samuel Hui	28856	953978	075 PCT
2. POM William Schumacher	04618	949640	075 PCT
3. POM Andre Ohara	09483	961031	075 PCT
4. POM Anthony Waite	09649	961434	075 PCT
5. SSA Robert Martinez	01369	922716	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Mahmudul Bhuiyan	19636	953682	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Samuel Hui	Abuse: Police Officer Samuel Hui stopped § 87(2)(b)	
B.POM Anthony Waite	Abuse: Police Officer Anthony Waite stopped § 87(2)(b)	
C.POM Andre Ohara	Abuse: Police Officer Andre Ohara stopped an individual.	
D.POM Samuel Hui	Abuse: Police Officer Samuel Hui questioned § 87(2)(b)	
E.POM Anthony Waite	Abuse: Police Officer Anthony Waite questioned § 87(2)(b)	
F.POM Andre Ohara	Abuse: Police Officer Andre Ohara questioned an individual.	
G.POM Samuel Hui	Abuse: Sergeant Samuel Hui questioned § 87(2)(b)	
H.POM Andre Ohara	Abuse: Police Officer Andre Ohara frisked an individual.	
I.POM Samuel Hui	Abuse: Police Officer Samuel Hui frisked § 87(2)(b)	
J.POM Anthony Waite	Abuse: Police Officer Anthony Waite frisked § 87(2)(b)	
K.POM Anthony Waite	Abuse: Police Officer Anthony Waite searched § 87(2)(b)	
L.POM Anthony Waite	Abuse: Police Officer Anthony Waite searched the vehicle in which § 87(2)(b) and an individual were occupants.	
M.POM Samuel Hui	Abuse: Police Officer Samuel Hui searched the vehicle in which individuals were occupants.	
N.SSA Robert Martinez	Abuse: Sergeant Robert Martinez searched the vehicle in which individuals were occupants.	

Officer(s)	Allegation	Investigator Recommendation
O.SSA Robert Martinez	Force: Sergeant Robert Martinez used physical force against § 87(2)(b)	
P.POM William Schumacher	Abuse: Police Officer William Schumacher interfered with § 87(2)(b)'s use of a recording device.	

## Case Summary

On June 4, 2019, § 87(2)(b) submitted the following complaint via the CCRB website.

At approximately 3:41 a.m. on June 2, 2019, § 87(2)(b) his friend § 87(2)(b) and a third, unidentified man were sitting in a parked vehicle at the intersection of Fulton Street and Miller Avenue in Brooklyn when Police Officer Samuel Hui (since promoted to sergeant), Police Officer Anthony Waite, and Police Officer Andre O'Hara of the 75<sup>th</sup> Precinct drove by them. The officers observed that the civilians' vehicle was partially parked in the pedestrian walkway, approached it on foot, and stopped the civilians (**Allegation A: Abuse of Authority: Stop:** § 87(2)(g), **Allegation B: Abuse of Authority: Stop:** § 87(2)(g), **Allegation C: Abuse of Authority: Stop:** § 87(2)(g)). The officers asked the civilians about their activities and possible possession of contraband (**Allegation D: Abuse of Authority: Question:** § 87(2)(g), **Allegation E: Abuse of Authority: Question:** § 87(2)(g), **Allegation F: Abuse of Authority: Question:** § 87(2)(g), **Allegation G: Abuse of Authority: Question:** § 87(2)(g)).

Police Officer Hui called for backup, bringing Sergeant Robert Martinez, Police Officer William Schumacher, and Police Officer Mahmudul Bhuiyan of the 75<sup>th</sup> Precinct to the scene. The officers then removed the civilians from their vehicle and frisked them (**Allegation H: Abuse of Authority: Frisk:** § 87(2)(g), **Allegation I: Abuse of Authority: Frisk:** § 87(2)(g), **Allegation J: Abuse of Authority: Frisk:** § 87(2)(g)). Police Officer Waite also searched § 87(2)(b) (**Allegation K: Abuse of Authority: Search (of person):** § 87(2)(g)).

Police Officer Waite, Police Officer Hui, and Sergeant Martinez all searched portions of the civilians' vehicle (**Allegation L: Abuse of Authority: Vehicle search:** § 87(2)(g), **Allegation M: Abuse of Authority: Vehicle search:** § 87(2)(g), **Allegation N: Abuse of Authority: Vehicle search:** § 87(2)(g)). § 87(2)(b) argued with the officers and attempted to walk around the vehicle, prompting Sergeant Martinez to push him back to his original position (**Allegation O: Force: Physical force:** § 87(2)(g)). § 87(2)(b) also used the flashlight on his cellphone while recording the incident, and Police Officer Schumacher repeatedly ordered him not to do so (**Allegation P: Abuse of Authority: Interference with recording:** § 87(2)(g)).

The officers admonished the civilians for allegedly possessing marijuana, having open containers of alcohol in the vehicle, and parking illegally. The officers then left the area without issuing any summonses or arresting anyone.

§ 87(2)(b) recorded portions of this incident with his cellphone (**Board Review 01 and 02**). The investigation obtained BWC video from Police Officer O'Hara (**Board Review 03**), Police Officer Waite (**Board Review 04**), Police Officer Hui (**Board Review 05**), Sergeant Martinez (**Board Review 06**), Police Officer Schumacher (**Board Review 07**), and Police Officer Bhuiyan (**Board Review 08**).

## Findings and Recommendations

**Allegation A – Abuse of Authority: Police Officer Samuel Hui stopped** § 87(2)(b)  
**Allegation B – Abuse of Authority: Police Officer Anthony Waite stopped** § 87(2)(b)

§ 87(2)(b)

**Allegation C – Abuse of Authority: Police Officer Andre Ohara stopped an individual.**

§ 87(2)(b) provided a telephone statement on June 6, 2019 (**Board Review 09**) and a sworn statement at the CCRB on June 17, 2019 (**Board Review 10**). Police Officer Hui was interviewed on March 3, 2020 (**Board Review 11**). Police Officer O’Hara was interviewed on February 28, 2020 (**Board Review 12**). Police Officer Waite was interviewed on March 4, 2020 (**Board Review 13**).

It is undisputed that as this incident began, the three civilians were sitting inside their parked vehicle on the northeast corner of Fulton Street and Miller Avenue. § 87(2)(b) was in the driver’s seat, § 87(2)(b) was in the front passenger seat, and the unidentified civilian sat in the rear seat behind § 87(2)(b). Police Officer Hui approached § 87(2)(b). Police Officer Waite approached § 87(2)(b) and Police Officer O’Hara approached the unidentified rear passenger.

All three interviewed officers stated that they first noticed the civilians’ vehicle because it was parked partially in the pedestrian crosswalk across Miller Avenue. Screenshots from Police Officer O’Hara’s and Police Officer Bhuiyan’s BWC videos corroborate these accounts, with the civilian vehicle’s front tires positioned within the painted crosswalk (**Board Review 14**). The officers consistently said that they first approached the civilians’ vehicle solely because it was illegally parked.

Under New York Vehicle and Traffic Law Article 32, Section 1202.(a).1.d, no person shall stop, stand, or park a vehicle on a crosswalk (**Board Review 15**). Officers may stop civilians when they possess a reasonable suspicion that the civilians are engaged in criminality (*People v. De Bour*, 40 N.Y.2d 210, 1976) (**Board Review 16**).

§ 87(2)(g)

**Allegation D – Abuse of Authority: Police Officer Samuel Hui questioned § 87(2)(b).**

**Allegation E – Abuse of Authority: Police Officer Anthony Waite questioned § 87(2)(b).**

**Allegation F – Abuse of Authority: Police Officer Andre O’Hara questioned an individual.**

**Allegation G – Abuse of Authority: Police Officer Samuel Hui questioned § 87(2)(b).**

As recorded in Police Officer O’Hara’s BWC video, Police Officer Hui immediately asked § 87(2)(b) “No weapons on you, right?” when he reached the civilian vehicle (0:35 of **Board Review 03**). In his interview, Police officer Hui stated that § 87(2)(b) did not do anything that indicated he had a weapon. Police Officer Hui stated that he asked § 87(2)(b) if he had any razors, and explained to the investigation that this was routine procedure.

As recorded in his BWC video, Police Officer Waite asked § 87(2)(b) if he knew that he could not have open containers of alcohol in the vehicle, and indicated the green, open, Dos Equis-brand beer bottle in the center console (1:00 of **Board Review 04**). A few

minutes later, Police Officer Waite asked § 87(2)(b) if the beer in the center console belonged to § 87(2)(b) and § 87(2)(b) refused to answer the question or claim ownership of the beer (4:05 of **Board Review 04**).

As recorded in his BWC video, Police Officer O'Hara asked the unidentified civilian "You guys smoking in the car?" (1:33 of **Board Review 03**) Shortly thereafter, Police Officer Hui told § 87(2)(b) that he smelled marijuana coming from the vehicle, and § 87(2)(b) responded that this was not true (as recorded in Police Officer Waite's BWC video, 2:35 of **Board Review 04**). In their interviews, Police Officer Hui, Police Officer O'Hara, and Police Officer Waite all described smelling marijuana in the vehicle upon their initial approach, but did not observe other evidence of marijuana possession at this point. In videos from this incident and both his telephone and sworn statements, § 87(2)(b) denied that there was any marijuana in the vehicle.

As recorded in his BWC video, Police Officer O'Hara had the unidentified civilian exit the vehicle and asked if he had weapons on him (2:00 of **Board Review 03**). In his interview, Police Officer O'Hara stated that while the unidentified civilian was inside the vehicle, he saw a single bulge on the civilian's body. He did not remember what it looked like, where on the civilian's body it was, or any other details.

As recorded in his BWC video, Police Officer Hui asked § 87(2)(b) "How much you been drinking tonight, sir?" § 87(2)(b) did not respond. Police Officer Hui asked § 87(2)(b) if he was aware that he could not drink alcohol in the vehicle, and § 87(2)(b) denied doing so (1:50 of **Board Review 05**). Police Officer Hui pointed out the open container in the cupholder next to § 87(2)(b) and § 87(2)(b) said that this belonged to § 87(2)(b). Police Officer Hui said that § 87(2)(b) was possessing the container, § 87(2)(b) repeated that the container was § 87(2)(b) and Police Officer Hui said that this was not possible because § 87(2)(b) had another container between his feet. They argued about whether this second container was open, and Police Officer Hui again asked "How much you been drinking tonight? You OK to drive?" § 87(2)(b) did not answer (0:40 to 3:00 of **Board Review 05**).

A police officer may pointedly question a civilian when he possesses a founded suspicion that the civilian is engaged in criminality (**Board Review 16**). Under New York Vehicle and Traffic Law Article 33, Section 1227.1, the possession of an open container containing an alcoholic beverage, in a motor vehicle located upon the public highways or right-of-way public highway is prohibited. Any operator or passenger violating this section shall be guilty of a traffic infraction (**Board Review 17**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation H – Abuse of Authority: Police Officer Andre O’Hara frisked an individual.**

**Allegation I – Abuse of Authority: Police Officer Samuel Hui frisked § 87(2)(b)**

**Allegation J – Abuse of Authority: Police Officer Anthony Waite frisked § 87(2)(b)**

**Allegation K – Abuse of Authority: Police Officer Anthony Waite searched § 87(2)(b)**

**Allegation L – Abuse of Authority: Police Officer Anthony Waite searched the vehicle in which § 87(2)(b) and an individual were occupants.**

**Allegation M – Abuse of Authority: Police Officer Samuel Hui searched the vehicle in which § 87(2)(b) and an individual were occupants.**

**Allegation N – Abuse of Authority: Sergeant Robert Martinez searched the vehicle in which § 87(2)(b) and an individual were occupants.**

As recorded in his BWC video, after having him exit the vehicle, Police Officer O’Hara frisked the unidentified civilian for approximately ten seconds (2:00 of **Board Review 03**). While the dark lighting and close proximity of the camera to the civilian’s body make it unclear exactly where Police Officer O’Hara frisked, the video’s movement indicates that he frisked portions of the civilian’s upper body, waist, and upper legs. In his interview, Police Officer O’Hara stated that he frisked the civilian’s body where a visible bulge was (see **Allegation F**) but was unable to identify where that was and did not remember if he frisked anywhere else. Police Officer O’Hara did not remember what the bulge was, but recalled having a conversation about the bulge with the rear passenger, determining it was an innocuous item, and allowing the rear passenger to keep it.

As recorded in his BWC video, after having him exit the vehicle, Police Officer Hui frisked § 87(2)(b) (4:10 of **Board Review 05**). While the dark lighting and close proximity of the camera to the civilian’s body make it unclear exactly where Police Officer Hui frisked, in his interview he stated that he frisked § 87(2)(b) from neck to ankles. Prior to this frisk, § 87(2)(b) did not do anything that indicated he had a weapon.

As recorded in Police Officer Waite’s BWC video, § 87(2)(b) retrieved his vehicle registration from the glove compartment, then continued to search through the glove compartment. Police Officer Waite told § 87(2)(b) to show him his hands, then briefly reached into the glove compartment (1:50 to 2:05 of **Board Review 04**). Approximately five minutes later, Police Officer Waite had § 87(2)(b) exit the vehicle and frisked his shoulders, torso, and legs (7:30 of **Board Review 04**). Police Officer Waite asked § 87(2)(b) what a certain object was, and § 87(2)(b) replied that it was his wallet. Police Officer Waite gripped and felt the object (8:23 of **Board Review 04**), then took a white object out of § 87(2)(b) upper pants pocket and asked what it was. § 87(2)(b) said it was a pack of cigarettes, and Police Officer Waite put the object pack in his pocket. In his interview, Police Officer Waite stated that whenever officers take someone out of a vehicle, they frisk them. In this incident, § 87(2)(b) jacket appeared as though it could have contained a knife. Police Officer Waite did not remember where on § 87(2)(b) body this knife would have been, if there actually was a knife, or if he went into

§ 87(2)(b) pockets.

As recorded in their BWC videos, both Police Officer Hui (6:05 to 9:30 of **Board Review 05**) and Sergeant Martinez (3:45 to 5:45 of **Board Review 06**) searched the vehicle's passenger cabin.

As noted under **Allegation F**, all three interviewed officers described smelling marijuana coming from the vehicle while § 87(2)(b) consistently denied that the car smelled of marijuana.

The smell of marijuana, on its own, gives officers the authority to search a vehicle and its occupants (People v. Chestnut, 43 A.D.2d 260, 1974) (**Board Review 18**).

§ 87(2)(g)

#### **Allegation O – Force: Sergeant Robert Martinez used force against § 87(2)(b)**

As most clearly shown by Police Officer Schumacher's BWC video, Sergeant Martinez stood at the civilian vehicle's rear and monitored the three civilians. He argued with § 87(2)(b) about whether the vehicle was parked in the crosswalk, and § 87(2)(b) stepped away from the vehicle's bumper towards him. Sergeant Martinez then pushed § 87(2)(b)'s upper body, moving him backwards approximately one step to his original position near the vehicle. Sergeant Martinez told § 87(2)(b) not to move but used no further force (2:45 to 3:05 of **Board Review 07**). This portion of the incident can also be seen in Police Officer O'Hara's and Sergeant Martinez's BWC videos (9:35 to 9:50 of **Board Review 03**, 2:50 to 3:10 of **Board Review 06**).

Under NYPD Patrol Guide Procedure 221-01, any application or use of force must be reasonable under the circumstances. Officers must use only the reasonable force necessary to gain control or custody of a subject (**Board Review 19**).

As seen in multiple BWC videos, § 87(2)(b) tried to move away from his vehicle and towards the officers. § 87(2)(g)

#### **Allegation P – Abuse of Authority: Police Officer William Schumacher interfered with § 87(2)(b)'s use of a recording device.**

As recorded on his own BWC video, Police Officer Schumacher repeatedly gave § 87(2)(b) orders about recording the officers with his cellphone's flashlight activated (**Board Review 07**). At 5:15 in the video, § 87(2)(b) first turned on his cellphone flashlight.

Prior to this, § 87(2)(b) had been recording the incident without the flashlight on (see § 87(2)(b)'s own video, **Board Review 01**). At 5:30 in Police Officer Schumacher's BWC video, § 87(2)(b) pointed his phone towards the camera. His flashlight was noticeably brighter than its surroundings, causing the video to blur from the glare. A few seconds later, Police Officer Schumacher told § 87(2)(b) to turn the light off. § 87(2)(b) tilted the light away from the BWC and continued to record. A few minutes later (7:55 of **Board Review 07**), § 87(2)(b) was back in the driver's seat while Police Officer Hui and Police Officer Schumacher spoke at the vehicle's rear. § 87(2)(b) again pointed his phone's flash towards the officers, forming a bright patch in the bottom left corner of the BWC video frame. Police Officer Schumacher asked § 87(2)(b) "How many times did I tell you about the light?" and walked over to the driver's open window. At this point, the phone and flashlight fell out of view, but neither § 87(2)(b)'s video nor the BWC video shows whether Police Officer Schumacher touched the phone or § 87(2)(b) lowered it himself. § 87(2)(b) and Police Officer Schumacher argued for approximately one minute about whether the flashlight had been shining in any officer's face, and Police Officer Schumacher told § 87(2)(b) not to reach for or use his phone any more. Police Officer Schumacher then walked away.

Under NYPD Patrol Guide Procedure 203-29, civilians have a right to lawfully observe and/or record police activities, including detentions, searches, and arrests, that happen on public streets and sidewalks. This right to observe and/or record police action can be limited for reasons such as the safety of officers or other members of the public, or when a violation of law is committed by the individual(s) who are videotaping. Otherwise, officers may not threaten, intimidate, or otherwise discourage an observer from recording an officer's activities (**Board Review 20**).

§ 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been party (**Board Review 21**).
- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]
- Police Officer Hui has been a member of service for seven years and has been a subject of 10 other CCRB complaints and 40 other allegations, three of which were substantiated.



§ 87(2)(g)

- CCRB complaint number 201610413 involved substantiated allegations of abuse of authority (frisk, vehicle search) and discourtesy (action) against Police Officer Hui. The CCRB recommended Command Discipline A and the NYPD enforced Formalized Training.
- Police Officer Waite has been a member of service for four years and has been a subject of 12 other CCRB complaints and 41 other allegations, none of which were substantiated.

§ 87(2)(g)

- Police Officer O'Hara has been a member of service for four years and has been a subject of seven other CCRB complaints and 15 other allegations, none of which were substantiated.

§ 87(2)(g)

- Sergeant Martinez has been a subject of 44 other CCRB complaints and 139 other allegations, 16 of which was substantiated.

§ 87(2)(g)

- CCRB complaint number 200205713 involved a substantiated allegation of discourtesy (word) against Sergeant Martinez. The CCRB recommended Charges and the NYPD enforced Command Discipline A.
- CCRB complaint number 200704280 involved substantiated allegations of abuse of authority (threat of force) and force (physical force) against Sergeant Martinez. The CCRB recommended Charges and the NYPD enforced No Disciplinary Action.
- CCRB complaint number 201101407 involved substantiated allegations of abuse of authority (stop, frisk) against Sergeant Martinez. The CCRB recommended Command Discipline and the NYPD enforced Instructions.
- CCRB complaint number 201310387 involved a substantiated allegation of force (physical force) against Sergeant Martinez. The CCRB recommended Charges and the NYPD enforced a Guilty verdict along with the forfeiture of 10 vacation days.
- CCRB complaint number 201510169 involved substantiated allegation of abuse of authority (stop, frisk, search of person) against Sergeant Martinez. The CCRB recommended Command Discipline B and the NYPD enforced Command Discipline B.
- CCRB complaint number 201606105 involved a substantiated allegation of abuse of authority (other) against Sergeant Martinez. The CCRB recommended Command Discipline B and the NYPD enforced No Disciplinary Action.
- CCRB complaint number 201610287 involved substantiated allegations of abuse of authority (frisk, vehicle search, interference with recording) and discourtesy (word) against Sergeant Martinez. The CCRB recommended Command Discipline B and the NYPD enforced Command Discipline B.
- Police Officer Schumacher has been a member of service for nine years and has been a subject of 13 other CCRB complaints and 38 other allegations, three of which were substantiated.

§ 87(2)(g)

- CCRB complaint number 201204235 involved substantiated allegations of force (physical force) and abuse of authority (premises entered and/or searched) against Police Officer Schumacher. The CCRB recommended Charges, and the NYPD

found him not guilty of the abuse of authority allegation and guilty of the force allegation (with a penalty of 10 forfeited vacation days).

- CCRB complaint number 201506191 involved a substantiated allegation of discourtesy (word) against Police Officer Schumacher. The CCRB recommended Command Level Instructions and the NYPD enforced No Disciplinary Action.

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- According to the New York City Office of the Comptroller, as of April 16, 2020, no Notice of Claim has been filed regarding this incident (**Board Review 23**).

- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Squad No.: 7

Investigator:	<u>Matthew Chaves</u> Signature	<u>SI Matthew Chaves</u> Print Title & Name	<u>05/13/2020</u> Date
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Squad Leader:	_____ Signature	Manager Vanessa Rosen _____ Print Title & Name	May 27, 2020 _____ Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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